



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1992

Ms. Elaine H. Piper
Assistant City Attorney
Police Legal Advisor
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-196

Dear Ms. Piper:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15019.

The City of El Paso received an open records request for a "crime scene evaluation" that pertains to the requestor's criminal conviction for aggravated assault on a peace officer. Although you initially considered the request "vague," you have since determined that he is most likely requesting two forms entitled "El Paso Police Department Crime Scene Unit Supplemental Report." You contend that the reports may be withheld pursuant to sections 3(a)(3) and 3(a)(8) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Further, section 3(e) of the Open Records Act provides:

For purposes of Subsection (a)(3) of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or *until the defendant has exhausted all appellate and postconviction remedies in state and federal court.* (Emphasis added.)

The information at issue clearly relates to the requestor's criminal trial. In effect, section 3(e) creates a legal presumption that subsequent litigation, e.g., post-

conviction habeas corpus, is reasonably anticipated until such time that all post-conviction remedies are exhausted. In this instance, the requestor has not exhausted all of his post-conviction remedies. Accordingly, the city may withhold the requested reports pursuant to section 3(a)(3).¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-196.

Yours very truly,



Steve Aragon
Assistant Attorney General
Opinion Committee

SA/RWP/lmm

Ref.: ID# 15019
ID# 15212
ID# 15621

Enclosures: Open Records Decision No.

cc: Henry Lewis
TDCJ #582211
Ellis Unit I, Route 6
Huntsville, Texas 77340
(w/o enclosures)

¹ We assume that none of the information in the records at issue has previously been made available to the requestor. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the requestor has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).